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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA  
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7 PETER JASON HELFRICH,

Case No. 2:16-cv-00312-RFB-NJK

8 *Petitioner,*

**ORDER**

9 vs.  
10

11 STATE OF NEVADA, *et al.,*

12 *Respondents.*  
13

14 This habeas action comes before the Court on petitioner's second, third and fourth  
15 pauper applications (ECF Nos. 8, 14 & 23), on multiple motions filed by petitioner (ECF Nos.  
16 10, 11, 12, 13, 17, 18 & 20), and for initial review of the amended petition (ECF No. 9) under  
17 Rule 4 of the Rules Governing Section 2254 Cases (the "Habeas Rules").  
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19 **I. Pauper Applications**

20 Petitioner's third pauper application (ECF No. 14) is properly completed with all  
21 required attachments. The Court finds based on the application that petitioner is unable to  
22 pay the filing fee. The third application therefore will be granted, and the remaining two  
23 applications will be denied without prejudice as moot. The Court accordingly proceeds to  
24 initial review of the amended petition (ECF No. 9).  
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26 **II. Screening**

27 With regard to initial review, habeas pleading is not notice pleading, and a habeas  
28 petitioner must state the specific facts that allegedly entitle him to habeas relief. *See Mayle*

1 v. *Felix*, 545 U.S. 644, 655-56 (2005). Even under a more liberal notice pleading standard,  
2 conclusory assertions that constitute merely formulaic recitations of the elements of a cause  
3 of action and that are devoid of further factual enhancement do not state a claim for relief.  
4 See *Ashcroft v. Iqbal*, 556 U.S. 662, 677-81 & 686 (2009). Accordingly, even under the more  
5 liberal notice pleading rules, the allegations of a pleading must “permit the court to infer more  
6 than the mere possibility” that a constitutional violation has occurred. 556 U.S. at 679. The  
7 stricter habeas pleading rules similarly require more than “mere conclusions of law,  
8 unsupported by any facts.” *Mayle*, 545 U.S. at 655. A habeas petitioner instead must “state  
9 facts that point to a real possibility of constitutional error.” *Id.*

10 Ground 1 does not present a claim that is cognizable in a federal habeas corpus  
11 proceeding. In Ground 1, petitioner alleges that his state post-conviction counsel had a  
12 conflict of interest and provided ineffective assistance at the state post-conviction evidentiary  
13 hearing. (See ECF No. 9, at 2 & 4.)<sup>1</sup> There is no federal constitutional right to appointed  
14 counsel in a state post-conviction proceeding, and claims of error in such proceedings do not  
15 present a federally cognizable claim. *E.g.*, *Franzen v. Brinkman*, 877 F.3d 26 (9<sup>th</sup> Cir. 1989).  
16 While alleged inadequate assistance of state post-conviction counsel may be considered with  
17 respect to certain procedural issues in a federal habeas corpus proceeding, a claim of such  
18 alleged inadequate assistance does not present an independently viable federal constitutional  
19 claim in its own right. See generally *Martinez v. Ryan*, 566 U.S. 1, 17 (2012). The Court  
20 further does not have appellate jurisdiction over the state courts, and it therefore generally  
21 cannot issue decrees to those courts or transfer this action to those courts.

22 Ground 2 is frivolous on its face. In Ground 2, petitioner alleges that the Nevada  
23 voluntary manslaughter statute under which he was convicted pursuant to a plea, N.R.S.  
24 200.080, is unconstitutional because, *inter alia*, it did not contain an enacting clause when  
25 Nevada’s state statutes were codified into the Nevada Revised Statutes some six decades  
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28 <sup>1</sup>Unless otherwise noted, all page citations herein are to the CM/ECF generated electronic document  
page number in the page header, not to any page number in the original document.

ago. A number of Nevada state inmates have attempted to overturn their convictions *pro se* based upon substantially similar arguments. The Supreme Court of Nevada and the Nevada Court of Appeals repeatedly have rejected the core argument presented here regarding the alleged lack of enacting clauses in the Nevada Revised Statutes in numerous opinions, which were not published apparently due to the nonprecedential value of an opinion on such a patently meritless challenge.<sup>2</sup> The Supreme Court of Nevada is the final arbiter of Nevada state law, including Nevada state constitutional law. The state supreme court's rejection of petitioner's core argument regarding an alleged lack of enacting clauses is the final word on that subject, and a federal court may not reach a different conclusion on the Nevada state law issue undergirding petitioner's federal claims. Nothing in the strained logic presented by petitioner leads to a different outcome with regard to his remaining related arguments. An alleged violation of a state constitutional doctrine of separation of powers does not give rise to a viable federal constitutional claim.

To the extent that Ground 3 carries forward the same frivolous argument that N.R.S. 200.080 is unconstitutional, Ground 3 fails to state a claim upon which relief may be granted. Ground 3 otherwise is conclusory to any *arguendo* extent that it alleges that the statute otherwise is unconstitutional, because it lacks supporting specific factual allegations.

Grounds 1 and 2 and the portion of Ground 3 alleging that N.R.S. 200.080 is unconstitutional accordingly will be dismissed for failure to state a claim upon which relief may be granted. The Court will direct service of the remainder of Ground 3 for a response, subject to the provisions *infra*.<sup>3</sup>

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<sup>2</sup>See, e.g., *Joseph v. Williams*, No. 70840, 2017 WL 3707316 (Nev. Ct. App., Aug. 16, 2017); *Newton v. State*, No. 72387, 2017 WL 2628530 (Nev., June 15, 2017); *Hull v. State*, No. 62954, 2013 WL 5730596 (Nev., Oct. 16, 2013); *Betts v. State*, No. 62579, 2013 WL 3270769 (Nev. June 12, 2013); *Depiano v. Palmer*, No. 61562, 2013 WL 3305482 (Nev., May 13, 2013); *Burgess v. State*, No. 60265, 2012 WL 5835122 (Nev., Nov. 15, 2012); *Valenzuela v. State*, No. 57979, 2011 WL 4345453 (Nev., Sept. 15, 2011); *Gutierrez-Piceno v. State*, No. 57391, 2011 WL 2748446 (Nev., July 13, 2011); *Lyons v. State*, No. 55760, 2011 WL 1044591 (Nev., March 17, 2011). The Court has cited only a representative sample of the numerous similar cases available via online legal research.

<sup>3</sup>Nothing herein suggests that Grounds 1, 2 and 3 are exhausted, timely and otherwise not barred (continued...)

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2 **III. Remaining Motions**

3       Petitioner's motion (ECF No. 10) to file a supplemental memorandum and for a  
4 telephonic hearing will be denied. Petitioner can present legal argument as to potential  
5 defenses and/or on the merits in reply to the response filed by respondents after service.

6       Petitioner's motion (ECF No. 11) for reconsideration of the denial of his motion for  
7 appointment of counsel will be denied. Appointment of counsel herein is governed by 18  
8 U.S.C. § 3006A, not the Americans with Disabilities Act or Rehabilitation Act. Petitioner's  
9 multitudinous filings in state and federal court belie his assertions that he has cognitive  
10 impairments that render him incapable of presenting his position adequately in proper person.  
11 Similarly, it is apparent that he can do so with the prison law library resources currently  
12 available to him. The Court again finds that the interests of justice do not require the  
13 appointment of counsel herein, for the reasons previously assigned. (See ECF No. 5, at 2-3.)

14       The motions (ECF Nos. 12 and 13) for a temporary restraining order and preliminary  
15 injunction will be denied as, in the main, moot. The motions sought to compel state  
16 correctional officers to produce the financial attachments required for petitioner's pauper  
17 application. Petitioner since has filed a properly completed pauper application, and the  
18 application has been granted. To the extent that petitioner is concerned about a law library  
19 supervisor allegedly not notarizing his filings, petitioner can file papers with a declaration  
20 under penalty of perjury under 28 U.S.C. § 1746, such that notarized filings are never  
21 necessary. (Cf. ECF No. 9, at 14.) The Court otherwise cannot compel state correctional  
22 officers to provide petitioner with unlimited legal copies free of charge.

23       Petitioner's associated motion (ECF No. 17) for a telephonic hearing on the foregoing  
24 motions for interlocutory equitable relief also will be denied.

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27       <sup>3</sup>(...continued)  
28 procedurally. The Court dismisses Grounds 1 and 2 and the designated portion of Ground 3 under 28 U.S.C.  
§ 2254(b)(2) even if these claims *arguendo* are, *inter alia*, unexhausted. These grounds do not raise even  
colorable federal claims. The Court makes no implicit holding, on any issue, by silence.

1 Petitioner's motion (ECF No. 18) styled as a motion for hearing is frivolous and will be  
2 denied. The Court will provide petitioner one warning with regard to such filings. Continued  
3 filing of frivolous papers in this action pertaining to a "proof of claim," "conditional acceptance  
4 for value upon proof of claim," and other similar purportedly UCC-related pseudo-legal papers  
5 will result in sanctions being imposed and petitioner being designated a restricted filer in this  
6 action. Such sanctions may include referral to correctional authorities for consideration of  
7 possible forfeiture of sentence credits under N.R.S. 209.451 and/or a finding of institutional  
8 disciplinary major violation MJ48 under the state correctional administrative regulations.

9 Petitioner's motion (ECF No. 20) to be transported for a live court hearing on the  
10 foregoing frivolous motion will be denied.

11 IT THEREFORE IS ORDERED that petitioner's third application (ECF No. 14) to  
12 proceed *in forma pauperis* is GRANTED, that petitioner shall not be required to pay the filing  
13 fee, and that his remaining pauper applications (ECF Nos. 8 & 23) are DENIED without  
14 prejudice as moot.

15 IT FURTHER IS ORDERED that all remaining pending motions (ECF Nos. 10, 11, 12,  
16 13, 17, 18, & 20) are DENIED, for the reasons assigned herein.

17 IT FURTHER IS ORDERED that Grounds 1 and 2 and the portion of Ground 3 alleging  
18 that N.R.S. 200.080 is unconstitutional in the amended petition (ECF No. 9) are DISMISSED  
19 for failure to state a claim upon which relief may be granted.

20 IT FURTHER IS ORDERED that the Clerk of Court shall update the respondents on  
21 the docket sheet as per the amended petition (ECF No. 9) and shall informally electronically  
22 serve the Nevada Attorney General with a copy of the amended petition and this order, along  
23 with regenerated notices of electronic filing of the remaining filings herein.

24 IT FURTHER IS ORDERED that respondents shall have **sixty (60) days** from entry of  
25 this order within which to respond to the remaining claims in Ground 3 in the amended  
26 petition. **Any response shall comply with the remaining provisions below.**

27 IT FURTHER IS ORDERED that, for this particular action, respondents shall assert all  
28 of their procedural defenses and argument as to the merits of the claims remaining in Ground

1 3 in a single consolidated answer. The Court in particular wishes to be able to assess  
2 petitioner's claim of actual factual innocence not only as a potential stand-alone substantive  
3 claim but also as it relates to any potentially applicable procedural defenses.

4 IT IS FURTHER ORDERED that respondents shall file and serve a set of state court  
5 record exhibits relevant to the response filed to the petition, in chronological order and indexed  
6 as discussed *infra*. **The exhibits shall include any extant state court record materials**  
7 **bearing on petitioner's claim of actual innocence, in a case which was resolved by a**  
8 **plea, such as any previously-prepared transcript of a preliminary hearing, investigative**  
9 **materials submitted with a charging document, and/or materials submitted for**  
10 **consideration at sentencing.**

11 IT IS FURTHER ORDERED that all state court record exhibits filed herein shall be filed  
12 with a separate index of exhibits identifying the exhibits by number. The CM/ECF attachments  
13 that are filed further shall be identified by the number or numbers of the exhibits in the  
14 attachment, in the same manner as in Case No. 3:06-cv-00087-ECR-VPC, nos. 25-71. The  
15 purpose of this provision is so that the Court and any reviewing court thereafter will be able  
16 to quickly determine from the face of the electronic docket sheet which numbered exhibits are  
17 filed in which attachments.

18 IT IS FURTHER ORDERED that counsel additionally shall send a hard copy of all  
19 exhibits filed to, for this case, the **Reno Clerk's Office**.

20 IT IS FURTHER ORDERED that petitioner shall have **sixty (60) days** from service of  
21 the answer to mail a reply to the Clerk for filing. All assertions of fact therein must be specific  
22 and must be supported by competent evidence in the federal record, including via the state  
23 court record exhibits.

24 DATED: March 13, 2018.

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27 RICHARD F. BOULWARE, II  
28 United States District Judge